IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6297 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISMILEBHAI ABDULLA DATA BROTHER OF YAKUB A DATA

Versus

STATE OF GUJARAT

Appearance:

MR MANOJ SHRIMALI for GIRISH PATEL ASSOC for Petitioner

MR UDAY BHATT, Ld. APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 29/08/2000

ORAL JUDGEMENT

1. This is a writ petition filed by the petitioner under Article 226 of the Constitution of India, challenging legality of order of detention dated 13-12-1999 passed by respondent no.2.

2. As per the case of the detaining Authority the detenu is a dangerous person within the meaning of Section 2 (C) of Gujarat Prevention of Anti-Social Activities Act, 1985 (in short "the Act"). It is also the case of the detaining Authority that the activities of detenu are prejudicial to the maintenance of public order. From the papers relating to grounds, of detention it appears that two criminal cases were lodged against the detenu; (1) C.R. No.I 207/1999 lodged in Chowk Bazaar Police Station and (2) C.R. No.I 246/1999 lodged in Athwa Police Station. Looking to the grounds, the detaining Authority has taken into conisderation the merits of the facts with regard to two incidents, one of 7th September, 1999 and another of 12th September, 1999. These incidents were such that no offences were registered in any police station.

3. Mr.Manoj Shrimali, the learned Advocate for the petitioner has argued that the detenu was arrested in case of C.R. No.I 207/1999 and was released on bail on 22nd September, 1999. The learned Advocate further submitted that after 22nd September, 1999, no untoward incident of any kind took-place till the order of detention came to be passed on 13-12-1999 and therefore, within a period of about three months, detenu was not involved in any case and therefore, as per the arguments of Mr. Manoj Shrimali, there is a gap of three months in between the date of last offence registered against the detenu and the date of order of detention. He has further argued that the detaining Authority has not explained the delay of three months. He has placed reliance on the case of Elesh Nandubhai Patel Vs Commissioner of Police, Ahmedabad City and Others reported in 1997 (1) GLH 381. In this case, it has been observed that unexplained delay in passing the order of detention, vitiates the order. This Court, following decision of the Hon'ble Supreme Court in Anand Prakash Vs State of U.P., reported in AIR 1990 SC 516 held that the unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. The present case squarely falls within the facts of the case cited by Mr. Manoj Shrimali.

4. Mr. Uday Bhatt has argued that in this case the detaining Authority, who passed the order, has filed the affidavit-in-reply in reply to the main petition. Mr. Uday Bhatt is not in a position to show that respondent No.2 has explained the delay for passing the order after three months in his affidavit.

5. In view of what is discussed hereinabove, the order, which is challenged in this petition, is bad in law and illegal and it is required to be quashed and set aside and accordingly it is hereby quashed and set aside. The detenu is ordered to be released forthwith, if he is not wanted for any other criminal case or any proceeding. Rule is made absolute. Direct service is permitted.

29-8-2000 (H. H. Mehta, J.)

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